

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED	
JUN 29 2015	
CLERK, U.S. DISTRICT COURT	By _____ Deputy

AMY GONZALEZ

Plaintiff.

v.

STELLAR RECOVERY, INC.

Defendant.

CIVIL ACTION NO.

4-15CV-473-A

TRIAL BY JURY DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Amy Gonzalez, complains of Stellar Recovery, Inc. Defendant, and for cause of action would respectfully show as follows:

PRELIMINARY STATEMENT

1. This is an action for damages brought by Plaintiff Amy Gonzalez against Defendant Stellar Recovery, Inc. for violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii).
2. Defendant was informed on several occasions to not call Plaintiffs' cellular telephone and should be fully aware that Defendant had no prior express or implied consent to call the cellular telephone.
3. Plaintiff contends that the Defendant has acted voluntarily, intentionally and under its own free will and knew or should have known that Defendant was engaged in acts that constitute violations of several statutes.

JURISDICTION AND VENUE

4. Jurisdiction of this Court arises under 47 U.S.C. §227(b)(3).
5. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1391b because Defendant engages in business within this state, to wit debt collection.
6. Venue is proper pursuant to 28 U.S.C. §1391b and 47 U.S.C. §227(b)(3) .
7. Venue in the Northern District of Texas, Fort Worth Division is proper in that the Plaintiff resides in State of Texas, Tarrant County, City of Fort Worth, the Defendant transacts business here, and the conduct complained of occurred here.

PARTIES

8. The Plaintiff in this lawsuit is Amy Gonzalez, (Mrs. Gonzalez) a natural person and a citizen of Tarrant County, Texas.
9. Defendant in this lawsuit is Stellar Recovery, Inc. (herein after "Stellar Recovery") a collection company with principal office at 1327 Highway 2 W, Suite 100, Kalispell, MT 59901.
10. Stellar Recovery may be served with process by serving: Business Filings Incorporated, 208 North Broadway, STE 313, Billings, MT 59101-0000.

FACTUAL ALLEGATIONS

11. The following telephone numbers are assigned to Stellar Recovery to use in there daily business operations:
1. (877) 236-5791
 2. (313) 483-8518
12. On or about October 06, 2014, Stellar Recovery began calling Mrs. Gonzalez's wireless cellular phone from telephone numbers (877) 236-5791 and (313) 483-8518 which is a number known to be used by Stellar Recovery in their debt collection operations.
13. On October 06, 2014 at 04:30 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
14. On October 08, 2014 at 06:06 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
15. On October 09, 2014 at 03:07 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
16. On October 28, 2014 at 11:46 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
17. On October 31, 2014 at 11:26 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
18. On November 04, 2014 at 6:42 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
19. On November 06, 2014 at 2:05 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
20. On November 13, 2014 at 10:16 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.

21. On November 15, 2014 at 11:39 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
22. On November 17, 2014 at 11:20 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
23. On November 20, 2014 at 09:58 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
24. On November 21, 2014 at 09:46 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent. The call was answered and Defendant was informed to stop calling the cellular phone.
25. On November 22, 2014 at 07:45 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent. The call was answered and Defendant was informed a second time to stop calling the cellular phone.
26. On November 24, 2014 at 09:37 a.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
27. On December 02, 2014 at 02:39 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent. The call was answered and Defendant was informed a third time to stop calling the cellular phone.
28. On December 09, 2014 at 01:38 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
29. On December 15, 2014 at 01:56 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.
30. On December 23, 2014 at 01:15 p.m. the Defendant called from 877-236-5791 to Mrs. Gonzalez's cellular telephone without written consent or implied consent.

31. On January 05, 2015 at 11:16 a.m. the Defendant called from 877-236-5791 to Mrs.

Gonzalez's cellular telephone without written consent or implied consent. On January 13, 2015 at 01:10 p.m. the Defendant called from 877-236-5791 to Plaintiff's cellular telephone without written consent or implied consent.

32. On January 26, 2015 at 01:26 p.m. the Defendant called from 877-236-5791 to Mrs.

Gonzalez's cellular telephone without written consent or implied consent.

33. November 22, 2014 at 09:37 p.m. thru January 05, 2015, the Defendant has willfully and knowingly called Ms. Gonzalez no less than seven (7) times without consent after being told to stop calling the cellular telephone.

34. The acts alleged herein all took place in Tarrant County, Texas in that the communications were received there.

35. Stellar Recovery used an automatic telephone dialing system to dial Ms. Gonzalez's cellular telephone from phone numbers (877) 236-5791 and (313) 483-8518 as defined by the Telephone Consumer Protection Act, 47 U.S.C. §227(a)(1).

36. Stellar Recovery called Ms. Gonzalez's cellular telephone for a non-emergency purpose.

37. Ms. Gonzalez has no prior or present established relationship with Stellar Recovery.

38. Ms. Gonzalez has no contractual obligation to pay Stellar Recovery any alleged consumer debt.

39. Ms. Gonzalez has never given Stellar Recovery permission to call her cellular telephone at any time.

40. Ms. Gonzalez attempted twice to mitigate damages in this matter with Stellar Recovery before commencing legal action and Stellar Recovery failed to respond.

COUNT I

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227(b)(1)(A) BY DEFENDANT STELLAR RECOVERY, INC.**

41. Paragraphs 1 through 40 are re-alleged as though fully set forth herein.
42. Ms. Gonzalez and Stellar Recovery do not have an established business relationship within the meaning of 47 U.S.C. §227(a)(2).
43. Stellar Recovery called Ms. Gonzalez's cellular telephone using an "automatic telephone dialing system" within the meaning of 47 U.S.C. §227(a)(1).
44. 47 U.S.C. §227(b)(1)(A) which states in part;

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be *unlawful for any person* within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

45. In each telephone communication referenced in ¶12 thru ¶32, Stellar Recovery has demonstrated willful or knowing non-compliance with 47 U.S.C. § 227 (b)(1)(A) by using an automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call Ms. Gonzalez's cellular telephone number, which is assigned to a cellular telephone service *with no prior express consent* and for *no emergency purpose*.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;

- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- d) Awarding such other and further relief as the Court may deem just and proper.

COUNT II

VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. §227(b)(1)(A)(iii) BY DEFENDANT STELLAR RECOVERY, INC.

46. Plaintiff alleges and incorporates the information in paragraphs 1 through 45.

47. 47 U.S.C. §227(b)(1)(A)(iii) which states in part;

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

48. In each telephone communication referenced in ¶12 thru ¶32, Stellar Recovery has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call Ms. Gonzalez's cellular telephone number, which is *assigned to a cellular telephone service*.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:


- e) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- f) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- g) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- h) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby demands trial by jury.

Dated: June 26, 2015

Respectfully Submitted,



Amy Gonzalez
416 Chatamridge Ct.
Fort Worth, TX 76052
(817) 909-8998
gonamyleigh@yahoo.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Amy Gonzalez

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Stellar Recovery, Inc.

County of Residence of First Listed Defendant Yellowstone
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

4-15CV-473-A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROFESSIONAL FEES <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii).

Brief description of cause:

Violations of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED PENDING OR CLOSED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/26/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE